

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JUAN ROCHA CORTEZ,

Plaintiff-Petitioner,

v.

CHAD WOLF, Acting Secretary of the  
Department of Homeland Security; KENNETH  
T. CUCCINELLI, Acting Director of the United  
States Citizenship and Immigration Services;  
DONALD NEUFELD, Associate Director,  
Service Center Operations, United States  
Citizenship and Immigration Services; LAURA  
B. ZUCHOWSKI, Field Office Director,  
Vermont Service Center, United States  
Citizenship and Immigration Services; ANNE  
ARRIES CORSANO, District Director of  
United States Citizenship and Immigration  
Services; CYNTHIA MUNITA, Field Office  
Director of United States Citizenship and  
Immigration Services, Department of Homeland  
Security; ELIZABETH GODFREY, Acting  
Field Office Director of Enforcement and  
Removal Operations, Seattle District Office,  
Immigration and Customs Enforcement;  
STEVEN LANGFORD, the Geo Group Inc.,  
Warden of Northwest Detention Center; the  
WARDEN of the Northwest Immigration  
Detention Center,

Defendants-Respondents.

Case No. 2:19-cv-2091

**COMPLAINT**

## INTRODUCTION

Petitioner Juan Rocha Cortez (Mr. Rocha Cortez) is a Mexican immigrant who has lived in the United States for nearly 15 years. In 2007, he was the victim of a vicious assault that left him hospitalized when a gang member in Caldwell, Idaho struck him over the head with a baseball bat. Following the attack, Mr. Rocha Cortez cooperated with the Caldwell Police Department, and later, with the Canyon County Prosecutor's Office. His cooperation resulted in the conviction of his assailants.

Based on this serious assault and his cooperation, Mr. Rocha Cortez applied for a U visa in 2017 to obtain lawful status in the United States. Since that date, United States Citizenship and Immigration Services (USCIS), the agency responsible for adjudicating U visa petitions, has not acted on Mr. Rocha Cortez's petition. This is true despite a serious change in Mr. Rocha Cortez's personal circumstances. On February 27, 2019, Immigration and Customs Enforcement (ICE) officers arrested Mr. Rocha Cortez as he left his apartment one morning. Since that time, ICE has detained Mr. Rocha Cortez at the Northwest Detention Center in Tacoma, Washington. Throughout this time, USCIS has failed to make a prima facie determination on Mr. Rocha Cortez's U-visa application, despite repeated requests from his attorney to do so and despite its legal obligation to conduct such an inquiry. Without such a determination, Mr. Rocha is in danger of being removed from this country. In light of the significant delay in making a prima facie determination and adjudicating his application, Mr. Rocha Cortez asks this Court to order Defendants to remedy their unreasonable delay and act on his application. Moreover, given Mr. Rocha Cortez' continuing detention nearly a year after ICE first detained him, he asks this Court to order Defendants to release him or provide him with a bond hearing where the government bears the burden to justify his continuing detention.

**JURISDICTION**

1. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361 (mandamus), and 28 U.S.C. § 2241(c)(5) (habeas corpus).

2. This Court may grant relief pursuant to 5 U.S.C. § 706, 28 U.S.C. § 1361, 28 U.S.C. § 2241 and the All Writs Act, 28 U.S.C. § 1651.

**VENUE**

3. Venue is properly in the United States District Court for the Western District of Washington pursuant to 28 U.S.C. § 1391(e) because Defendants are employees, officers, and agencies of the United States and no real property is at issue in this case. Additionally, venue is proper in this Court because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington.

4. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue also properly lies in this Court because the Court is located in the judicial district in which Mr. Rocha Cortez currently is in custody.

**PARTIES**

5. Petitioner Juan Rocha Cortez is a Mexican immigrant who is currently in removal proceedings and is detained at the Northwest Detention Center in the custody of the Department of Homeland Security (DHS). He applied for U nonimmigrant status in 2017 and was ordered removed in September 2019. His removal case is currently before the Board of Immigration Appeals, and his U nonimmigrant petition remains pending before USCIS.

6. Defendant Chad Wolf is the Acting Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA, and oversees

1 ICE and USCIS. Mr. Wolf has ultimate custodial authority over Petitioner and is sued in his  
2 official capacity.

3 7. Defendant Kenneth Cuccinelli is the Acting Director of USCIS and is responsible  
4 for the agency's day to day operations, including the processing of U visa applications. Plaintiff  
5 sues Defendant Cuccinelli in his official capacity.

6 8. Defendant Donald Neufeld is Associate Director for Service Center Operations  
7 with USCIS. In that capacity, Defendant Neufeld is responsible for the Vermont Service Center,  
8 which is tasked with processed and adjudicating U visa petitions. Plaintiff sue Defendant  
9 Neufeld in his official capacity.

10 9. Defendant Laura B. Zuchowski is Director of the Vermont Service Center. The  
11 Vermont Service Center is responsible for adjudicating Mr. Juan Cortez's U-visa petition.  
12 Plaintiff sues Defendant Zuchowski in her official capacity.

13 10. Defendant Anne Arries Corsano is the District Director of the Seattle District of  
14 USCIS, and is sued in her official capacity.

15 11. Defendant Cynthia Munita is the Field Office Director of the USCIS Seattle Field  
16 Office, and is sued in her official capacity.

17 12. Respondent Elizabeth Godfrey is the Acting Director of the Seattle District Office  
18 of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement,  
19 Department of Homeland Security. As such, Ms. Godfrey is Petitioner's immediate custodian  
20 and the official charged with removing him from the United States. Plaintiff sues Ms. Godfrey in  
21 her official capacity.

1           13.     Respondent Steven Langford is, on information and belief, employed by the  
2 private corporation Geo Group Inc., as Warden of the Northwest Detention Center, where  
3 Petitioner is detained. He is sued in his official capacity.

## 4                                   **LEGAL FRAMEWORK**

### 5     **U Non-Immigrant Status**

6           14.     U nonimmigrant status is a form of lawful immigration status. Congress created  
7 the status to protect nonimmigrant victims of serious crimes and to increase public safety by  
8 encouraging those nonimmigrants to report such crimes to law enforcement officers and to assist  
9 in the prosecution of such crimes. Congress explained when passing the authorizing statute that it  
10 hoped U status would “strengthen the ability of law enforcement agencies to detect, investigate,  
11 and prosecute cases.” Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No.  
12 106-386, § 1513(a)(2), 114 Stat. 1466, 1533 (2000).

13           15.     To obtain U status, an applicant must satisfy several criteria. The applicant must  
14 (1) be the victim of qualifying criminal activity, (2) have suffered substantial physical or mental  
15 abuse as a result of that criminal activity; (3) possess credible and reliable information  
16 concerning the criminal activity; and (4) have received a signed, third-party certification from a  
17 law enforcement official, prosecutor, judge, or other, similar official attesting to their helpfulness  
18 in the investigation or prosecution of the criminal activity. *See* 8 U.S.C. § 1101(a)(15)(U); *id.* §  
19 1184(p); 8 C.F.R. § 214.14(b).

20           16.     An individual seeking U nonimmigrant status must complete Form I-918, Petition  
21 for U Nonimmigrant Status, and submit that form to USCIS’s Vermont Service Center. The  
22 Vermont Service Center and USCIS’s Nebraska Service Center have exclusive jurisdiction over,  
23 and jointly process, petitions for U nonimmigrant status.

1           17. Under the Immigration and Nationality Act (INA), Congress provided a  
2 mechanism to help protect noncitizens in removal proceedings who are eligible to receive U  
3 status. Section 237 of the INA empowers the Secretary of Homeland Security to determine  
4 whether a U visa petition “sets forth a prima facie case.” 8 U.S.C. § 1227(d)(1). The Secretary  
5 has designated USCIS to make such prima facie determinations.

6           18. Once an applicant receives a positive prima facie determination, ICE may grant  
7 an administrative stay of removal from the United States. *See id.*; *see also* ICE, Revision of Stay  
8 of Removal Request Reviews for U Visa Petitioners (last updated Nov. 12, 2019),  
9 <https://www.ice.gov/factsheets/revision-stay-removal-request-reviews-u-visa-petitioners>.

10           19. Moreover, a positive prima facie determination can also warrant a continuance in  
11 removal proceedings while the U visa applicant waits for USCIS to adjudicate their application.  
12 As the Board of Immigration Appeals (BIA) explained in *Matter of Sanchez Sosa*, “there is a  
13 rebuttable presumption that [a noncitizen] who has filed a prima facie approvable application  
14 with the USCIS will warrant a favorable exercise of discretion for a continuance for a reasonable  
15 period of time.” 25 I. & N. Dec. 807 (BIA 2012).

16           20. By receiving a continuance, a U visa applicant may be able to extend their  
17 removal proceedings until USCIS places them on the waitlist. That placement in turn protects the  
18 applicant from removal.

19           21. Only 10,000 individuals may receive U status in any given fiscal year. 8 U.S.C. §  
20 1184(p)(2)(A).

21           22. Individuals who would receive U status but for the statutory cap of 10,000 must  
22 be placed on a waiting list pending a final grant or denial of their petition. 8 C.F.R. §  
23  
24

1 214.14(d)(2). Defendants’ own regulations require them to adjudicate and place on the waiting  
2 list qualified U status applicants. *Id.*

3 23. The waiting list for those with approved applications also provides important  
4 protections. Petitioners on the waiting list, as well the family members of those petitioners, are  
5 eligible for employment authorization and are not subject to removal from the United States. *Id.*;  
6 *see also* ICE, Revision of Stay of Removal Request Reviews for U Visa Petitioners (last updated  
7 Nov. 12, 2019), [https://www.ice.gov/factsheets/revision-stay-removal-request-reviews-u-visa-](https://www.ice.gov/factsheets/revision-stay-removal-request-reviews-u-visa-petitioners)  
8 [petitioners](https://www.ice.gov/factsheets/revision-stay-removal-request-reviews-u-visa-petitioners).

9 24. Under 8 C.F.R. § 214.14(d)(2), Defendants are required to place on the waiting  
10 list all petitioners who would be granted U status but for the statutory cap. As recently as fiscal  
11 year 2014, USCIS processed U-visa applications within 5 months of receipt to comply with this  
12 requirement, quickly placing “[a]ll eligible petitioners” on the waiting list. 8 C.F.R. §  
13 214.14(d)(2).

14 25. Since 2014, the processing time has skyrocketed. Today, the U status processing  
15 time exceeds four years just for placement on the U visa waitlist. In fact, between fiscal year  
16 2016 and fiscal year 2018, the processing time for U-status petitions nearly doubled, even while  
17 the number of new petitions filed in that time period did not increase.

18 26. Moreover, since 2014, USCIS has also *decreased* the number of individuals on  
19 the waitlist, despite its duty to make that waitlist available to “[a]ll eligible petitioners.” 8 C.F.R.  
20 § 214.14(d)(2).

21 27. Finally, once granted, U status comes with work authorization, 8 U.S.C. §  
22 1184(p)(3)(B)) and generally lasts for four years, *id.* § 1184(p)(6)). In the final year, U-status  
23 holders may apply to adjust their status to lawful permanent resident status. *Id.* § 1255(m).

**Immigration Detention and Due Process**

28. While the INA and federal regulations safeguard Mr. Rocha Cortez's rights when applying for a U visa, the Constitution protects his rights in detention. As the Supreme Court has explained, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

29. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First, and at issue here, is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c). As Mr. Rocha Cortez has no disqualifying crimes, he is subject to detention under § 1226(a).

30. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, *id.* § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).

31. Most recently, in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Supreme Court held that as a matter of statutory interpretation, 8 U.S.C. § 1226(a) does not require the government to provide a detainee more than an initial bond hearing. Significantly, the Court did not reach the constitutional question of whether the Due Process Clause requires an opportunity to test the government's justification for detention once detention after that initial hearing becomes prolonged.



1           32.     Since the Supreme Court’s *Jennings* decision, the Ninth Circuit has expressed  
2 “grave doubt” that “any statute that allows for arbitrary prolonged detention without any process  
3 is constitutional or that those who founded our democracy precisely to protect against the  
4 government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909  
5 F.3d 252, 256 (9th Cir. 2018).

6           33.     To guarantee against such arbitrary detention and to guarantee the right to liberty,  
7 due process requires “adequate procedural protections” that ensure government’s asserted  
8 justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally  
9 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation  
10 marks omitted).

11           34.     In the immigration context, the Supreme Court has recognized only two valid  
12 purposes for civil detention: to mitigate the risks of danger to the community and to prevent  
13 flight. *Id.*; *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen  
14 based on any other justification.

15           35.     As a result, where the government detains a noncitizen for a prolonged period,  
16 due process requires an individualized hearing before a neutral decisionmaker to determine  
17 whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy,  
18 J., concurring); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the  
19 “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S.  
20 245, 249-50 (1972) (noting that “lesser safeguards may be appropriate” for “short-term  
21 confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment  
22 context, that “the length of confinement cannot be ignored in deciding whether [a] confinement  
23 meets constitutional standards”).

1           36. Detention without a bond hearing is unconstitutional when it becomes prolonged,  
2 exceeding six months. *See Demore*, 538 U.S. at 529-30 (upholding only “brief” detentions under  
3 8 U.S.C. § 1226(c) that last “roughly a month and a half in the vast majority of cases . . . and  
4 about five months in the minority of cases in which the alien chooses to appeal”); *Zadvydas*, 533  
5 U.S. at 701 (“Congress previously doubted the constitutionality of detention for more than six  
6 months.”).

7           37. The recognition that six months constitutes a substantial period of confinement is  
8 deeply rooted in our legal tradition. With only a few exceptions, “in the late 18th century in  
9 American crimes triable without a jury were for the most part punishable by no more than a six-  
10 month prison term.” *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with  
11 this tradition, the Supreme Court has found six months to be the limit of confinement for a  
12 criminal offense that a federal court may impose without the protection afforded by a jury trial.  
13 *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked  
14 to six months as a benchmark in other contexts involving civil detention. *See McNeil*, 407 U.S. at  
15 249, 250-52 (recognizing six months as an outer limit for confinement without individualized  
16 inquiry for civil commitment).

17           38. Accordingly, the Ninth Circuit has held that immigration detention becomes  
18 prolonged at six months. *See Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011).

19           39. Moreover, the Supreme Court has repeatedly recognized that individuals detained  
20 for civil reasons must receive additional process *after* their original commitment. Such additional  
21 process is required to guarantee that detention continues to comport with due process by  
22 guaranteeing detention remains reasonably related to its purpose. *See, e.g., Foucha v. Louisiana*,

1 504 U.S. 71, 78 (1992); *O'Connor v. Donaldson*, 422 U.S. 563, 574–75 (1975); *Jackson v.*  
2 *Indiana*, 406 U.S. 715, 738 (1972); *McNeil*, 407 U.S. at 249-50.

3 40. Accordingly, immigration detention requires an additional bond hearing after an  
4 individual has been detained for six months under § 1226(a). And even if a bond hearing is not  
5 required in every such case, detention for six months provides a strong presumption that  
6 continued detention is unreasonable absent an opportunity to test the government’s justification  
7 for continued detention.

8 41. Due process also requires certain minimal procedures at bond hearings. First, the  
9 government must bear the burden of proof by clear and convincing evidence to justify continued  
10 detention. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Due process requires  
11 placing the burden on the government because of the profound liberty interests at stake when the  
12 government continues to detain a noncitizen for a prolonged period. *See, e.g., United States v.*  
13 *Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where the detainee was  
14 afforded a “full-blown adversary hearing,” requiring “clear and convincing evidence” before a  
15 “neutral decisionmaker”); *Foucha*, 504 U.S. at 81-83.

16 42. Second, the decisionmaker must consider available alternatives to detention. *Bell*  
17 *v. Wolfish*, 441 U.S. 520, 538 (1979). Detention is not reasonably related to its purposes of flight  
18 risk and protecting the community from danger if reasonable alternatives are available. ICE’s  
19 alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has  
20 achieved extraordinary success in ensuring appearance at removal proceedings, reaching  
21 compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir.  
22 2017). It follows that alternatives to detention must be considered in determining whether  
23 prolonged detention is warranted.

1           43.     Finally, if the government cannot meet its burden, a decisionmaker must assess a  
2 noncitizen's ability to pay a bond must when determining the appropriate conditions of release.  
3 *Id.* at 991.

#### 4                                   **FACTUAL ALLEGATIONS**

##### 5     **Mr. Rocha Cortez's U Visa Petition and Removal Proceedings**

6           44.     Mr. Rocha Cortez is a Mexican immigrant who entered the United States in 2005.

7           45.     On June 10, 2007, Mr. Rocha Cortez was walking with a friend when a group of  
8 people confronted them. One of the men in the group displayed a pistol, while another individual  
9 in the group struck Mr. Rocha Cortez in the head with a bat.

10          46.     Mr. Rocha Cortez and his friend did nothing to provoke the violent attack and had  
11 no prior connections to anyone in the group or the assailant who struck him with a bat. Police  
12 records from the incident indicate that the assailant, who was a suspected gang member, believed  
13 Mr. Rocha Cortez was someone else who had allegedly attacked a friend of the assailant's.

14          47.     Mr. Rocha Cortez was hospitalized with a significant head injury following the  
15 incident. While he was still in the hospital, an officer with the Caldwell Police Department came  
16 to ask him questions about the incident. The information Mr. Rocha Cortez provided helped lead  
17 to his assailant's arrest.

18          48.     A few days later, on June 13, 2007, Mr. Rocha Cortez came to the police  
19 department after he was released from the hospital. Mr. Rocha Cortez provided further assistance  
20 and another statement to the investigating officers about the assault. During this second meeting  
21 with the police, Mr. Rocha Cortez took papers with him to complete a written witness statement.

22          49.     On June 19, 2007, Mr. Rocha Cortez again visited the police department to  
23 answer the investigating officers' questions. During this interview, Mr. Rocha Cortez expressed  
24

1 fear to the officers that he might again be a target if he assisted the police, noting that he had not  
2 known the people who confronted him. He also identified one of the members of the group who  
3 had assaulted him as the member with a pistol when asked to identify that person in a photo line-  
4 up.

5 50. Based on Mr. Rocha Cortez's assistance and that of other witnesses, the Canyon  
6 County Prosecutor's Office successfully prosecuted the man who had displayed the pistol for  
7 violating Idaho Code Ann. § 18-3303. That statute criminalizes exhibiting a deadly weapon in a  
8 threatening manner.

9 51. Mr. Rocha Cortez's assistance also helped lead to the successful prosecution of  
10 the individual who struck him with a bat. The Canyon County Prosecutor's Office charged the  
11 assailant with aggravated battery under Idaho Code Ann. § 18-907.

12 52. Based on Mr. Rocha Cortez's assistance, a deputy prosecuting attorney at the  
13 Canyon County Prosecutor's office signed an I-918 Supplement B for Mr. Rocha Cortez. The  
14 form certified that Mr. Rocha Cortez had been helpful in assisting law enforcement with the  
15 investigation of the individuals who had participated in his assault.

16 53. Aggravated battery under Idaho Code Ann. § 18-907 is a qualifying crime for U  
17 status purposes, as it is a "similar activity" to "felonious assault." 8 U.S.C. § 1101(a)(15)(U)(iii).

18 54. Mr. Rocha Cortez suffered significant physical and mental abuse because of this  
19 incident. The assault produced bleeding, fractured a bone, and left him hospitalized. In addition,  
20 the assault resulted in lasting headaches and dizziness, as well as significant stress and fear.

21 55. Notwithstanding the attack, Mr. Rocha Cortez has enjoyed a productive life in the  
22 United States. He has married and has three U.S. citizen children—two daughters and one son.

1 The oldest is ten years old and the youngest is five. Mr. Rocha Cortez has worked in agricultural  
2 jobs and as a wildland firefighter to provide for his family both here in the United States.

3 56. On October 2, 2017, Mr. Rocha Cortez submitted an application to obtain U status  
4 on the basis of the assault he suffered in 2007. His wife is included as a derivative on the  
5 petition, providing an opportunity for her to qualify for U visa status as well. USCIS provided a  
6 receipt notice for the petition dated October 30, 2017.

7 57. Nearly a year and half later, on February 27, 2019, ICE apprehended Mr. Rocha  
8 Cortez one morning while leaving an apartment in Oregon.

9 58. ICE then proceeded to detain Mr. Rocha Cortez at the Northwest Detention and  
10 placed him in removal proceedings.

11 59. After ICE placed Mr. Rocha Cortez in removal proceedings, his immigration  
12 counsel asked ICE to request a prima facie determination from USCIS on his U visa petition. An  
13 ICE trial attorney made that request on April 26, 2019, following a preliminary hearing in Mr.  
14 Rocha Cortez's case. USCIS did not respond.

15 60. Once in removal proceedings, Mr. Rocha Cortez also applied for cancellation of  
16 removal under 8 U.S.C. § 1229b(b)(1). Cancellation of removal under § 1229b(b)(1) is a form of  
17 immigration relief that allows longtime residents of the United States who entered the country  
18 unlawfully to obtain lawful permanent resident status if they meet certain requirements,  
19 including (1) having ten years of continuous presence in the United States, (2) having "good  
20 moral character" and not having committed certain offenses, and (3) demonstrating that a  
21 qualified U.S. citizen or lawful permanent resident would suffer extreme and unusual hardship if  
22 the noncitizen is removed.

1           61.     In Mr. Rocha Cortez's case, he provided significant evidence that his children will  
2 suffer extreme and unusual hardship if he is removed (and already are because of his detention).  
3 His eldest child and daughter suffers from chronic liver dysfunction and also has a history of  
4 kidney and urinary tract infections, meaning frequent doctors visit and constant parental care are  
5 essential.

6           62.     On July 7, 2019, and September 6, 2019, the immigration court held hearings on  
7 Mr. Rocha Cortez's cancellation of removal application. Despite the significant physical and  
8 mental health issues Mr. Rocha Cortez's children face, the immigration judge (IJ) denied his  
9 application for failing to establish that his removal would cause cause his children extreme and  
10 unusual hardship.

11           63.     After the individual hearings, Mr. Rocha Cortez's second oldest—his nine-year-  
12 old daughter—threatened to commit suicide at school, underscoring the extreme stress and  
13 difficulty that her father's absence is already placing on the family. As a result of that incident,  
14 she was hospitalized.

15           64.     Mr. Rocha Cortez filed an appeal of the IJ's decision denying cancellation of  
16 removal relief to the Board of Immigration Appeals (BIA). That appeal is currently pending.

17           65.     In between the July 7 and September 6 immigration court hearings, an ICE trial  
18 attorney once again requested that USCIS make a prima facie determination on Mr. Rocha  
19 Cortez's U-visa petition. This time, USCIS responded by saying that the agency did not have Mr.  
20 Rocha Cortez's file.

21           66.     On September 2, 2019, Mr. Rocha Cortez's immigration counsel requested  
22 assistance from the office of Senator Mike Crapo to inquire about the status of the U visa petition.  
23  
24

1 About two weeks later, on September 19, the Senator’s office forwarded a response from USCIS  
2 saying the agency did not have an update on the petition’s status.

3 67. That same day—September 19—Mr. Rocha Cortez’s immigration counsel filed a  
4 request to expedite the processing of his U status petition. She also requested a status update on  
5 the case

6 68. One day later, the Vermont Service Center (VSC) responded to the status update  
7 request, saying that Mr. Rocha Cortez’s “case is not currently located at the VSC. It is located at  
8 the [USCIS] Seattle Field Office. We are unable to assist you with your inquiry at this time.”  
9 This response came nearly six months after ICE first requested a prima facie determination.

10 69. A few weeks later, on October 4, 2019, Mr. Rocha Cortez’s immigration counsel  
11 again requested an update from USCIS. USCIS responded on October 25 by again casting blame  
12 on the location of the file, which the VSC continued to claim was in Seattle.

13 70. Mr. Rocha Cortez’s prima facie determination and requests to expedite remain  
14 pending. His U visa application has now been pending well over two years.

15 71. In light of these dramatically inflated wait times, U visa applicants like Juan  
16 recently filed a class action complaint in the Eastern District of New York. *See N-N v.*  
17 *McAleenan*, No. 19-cv-05295 (E.D.N.Y) (filed Sept. 17, 2019). The case challenges USCIS’s  
18 unlawful failure to adjudicate pending U visa petitions and place those petitioners on the wait  
19 list.

20 72. Specifically, the plaintiffs in *N-N* have proposed certifying a class of U visa of  
21 applicants whose applications had been pending for over two years as of the complaint filing  
22 date. While two years is significantly higher than the processing times of recent years, it would  
23  
24



1 significantly reduce the current waiting time of over 44 months for adjudication of a U visa  
2 petition.

3 73. Mr. Rocha Cortez's situation presents particularly compelling factors that  
4 underscore USCIS's unreasonable delay. Unlike many of the class members in *N-N*—which  
5 includes all U visa applicants—Mr. Rocha Cortez is in removal proceedings *and* is detained. The  
6 cases of immigration detainees receive expedited treatment compared to other cases, making  
7 protections like the prima facie determination and waiting list particularly important for them.

8 74. As a result, Mr. Rocha Cortez is among the most likely to face removal absent  
9 adjudication of his U visa petition. The agency has nevertheless ignored his request for a prima  
10 facie determination, as well as his request to expedite his case.

11 **Mr. Rocha Cortez's Detention**

12 75. After ICE arrested Mr. Rocha Cortez, ICE placed him in detention at the  
13 Northwest Detention Center.

14 76. On March 8, 2019, Mr. Rocha Cortez submitted an evidence packet to the  
15 immigration court in support of his request for bond with the assistance of counsel.

16 77. The evidence packet included Mr. Rocha Cortez's response to a questionnaire  
17 from the immigration court, his children's birth certificates and school records, evidence of his  
18 daughter's health problems, evidence of his stable address and home, over 20 letters of support  
19 from employers, family members, and friends (including a letter attesting to Mr. Rocha Cortez's  
20 bravery in firefighting), and evidence regarding his criminal history. As to this last issue, and as  
21 noted above, Mr. Rocha Cortez has offenses related to his failure to obtain a license and two DUI  
22 offenses – one from 2008 and one from 2018.



85. The APA empowers federal courts to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). Under the APA, this Court may compel agency action that is discrete and which an agency is required to take. *Norton v. South Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004). For the reasons set forth above, the prima facie determination satisfies this requirement.

86. Defendants have failed to make a prima facie determination in Mr. Rocha Cortez’s case for over eight months.

87. Defendants’ months-long delay in making a prima facie determination in Mr. Rocha Cortez’s case is unreasonable. Accordingly, this Court should order Defendants to determine whether Mr. Rocha Cortez is prima facie eligible for a U visa immediately.

**Count II**  
**Administrative Procedure Act – Unreasonable Agency Delay**  
**(Failure to Adjudicate U Visa Petition)**

88. Mr. Rocha Cortez repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint as if fully set forth herein.

89. Under the INA and federal regulations, Defendants have a duty to adjudicate U visa petitions. 8 U.S.C. §§ 1101(a)(15)(U), 1184(p); 8 C.F.R. § 204.14(d)(2).

90. Under 8 C.F.R. § 204.14(d)(2), USCIS “must” place “[a]ll eligible petitioners” on the U visa waiting list. Placing an individual on the waitlist ensures that they will receive employment authorization and will not face removal from the United States. These protections help encourage noncitizen victims of crime to report crimes and guarantee that they remain in the United States to assist law enforcement if necessary.

91. Adjudication of a U visa petition is a discrete action that the agency is required to take, and this Court may therefore order Defendants to adjudicate Mr. Rocha Cortez’s petition.

92. Defendants have delayed well over two years in adjudicating Mr. Rocha Cortez's U visa petition.

93. Defendants' years-long delay in adjudicating Mr. Rocha Cortez's petition is unreasonable. Congress had indicated that it expects Defendants to adjudicate immigration benefit applications within six months of filing. *See* 8 U.S.C. § 1571(b). Moreover, here, Mr. Rocha Cortez is a detainee in removal proceedings, making the timely adjudication of his application particularly important. Congress has recognized that U visa applicants in removal proceedings should receive timely consideration of their applications. *See id.* § 1227(d)(1). Finally, agency regulations and policies recognize the important protections that adjudication of a petition provides, further underscoring that the agency must act in a timely fashion.

94. Accordingly, this Court should order Defendants to remedy their unlawful delay of Mr. Rocha Cortez's application and adjudicate his U visa petition.

**Count III**  
**Writ of Mandamus**  
**(Failure to Make Prima Facie Determination)**

95. Mr. Rocha Cortez repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint as if fully set forth herein.

96. A writ of mandamus is appropriate when "(1) the individual's claim is clear and certain; (2) the official's duty is nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt, and (3) no other adequate remedy is available." *Kildare v. Saenz*, 325 F.3d 1078, 1084 (9th Cir. 2003) (quoting *Patel v. Reno*, 134 F.3d 929, 931 (9th Cir. 1998)).

97. For the reasons explained above, Defendants have a clear duty to make a prima facie determination in Mr. Rocha Cortez' case.

1        98. No other remedy is available to ensure Mr. Rocha receives a timely  
2 determination. Despite repeated inquiries about the determination, Defendants have failed to act,  
3 and therefore issuing a writ is appropriate to ensure the agency promptly complies with its duty.

4                                    **Count IV**  
5                                    **Writ of Mandamus**  
6                                    **(Failure to Adjudicate U Visa Application)**

7        99. Mr. Rocha Cortez repeats and re-alleges the allegations contained in the preceding  
8 paragraphs of this Complaint as if fully set forth herein.

9        100. Under the INA and federal regulations, Defendants have a clear duty to adjudicate  
10 Mr. Rocha Cortez's U visa application and place him on the U visa waitlist.

11        101. No other remedy is available to ensure Mr. Rocha Cortez receives a timely  
12 determination. Despite repeated inquiries about Mr. Rocha Cortez's petition, Defendants have  
13 failed to act on it. Issuance of a writ is appropriate to ensure that the agency promptly complies  
14 with its duty to adjudicate Mr. Rocha Cortez's application.

15                                    **Count V**  
16                                    **Writ of Habeas Corpus – Violation of Fifth Amendment Right**  
17                                    **to Due Process (Freedom from Arbitrary Detention)**

18        102. Mr. Rocha Cortez repeats and re-alleges the allegations contained in the preceding  
19 paragraphs of this complaint as if fully set forth herein.

20        103. The Due Process Clause of the Fifth Amendment forbids the government from  
21 depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

22        104. Mr. Rocha's Cortez's detention is not reasonably related to a legitimate  
23 government purpose. The IJ based his decision denying Mr. Rocha Cortez's release on his  
24 alleged danger to the community. Mr. Rocha Cortez has no criminal history other than offenses

1 related to his inability to obtain a license (a product of his immigration status) and two DUIs that  
2 occurred nearly a decade apart.

3 105. For this reason, the Court should order Mr. Rocha Cortez's immediate release.

4 106. Moreover, DHS has prolonged Mr. Rocha Cortez's detention without providing  
5 him an opportunity to test the continuing validity of his detention.

6 107. To justify Mr. Rocha Cortez's ongoing prolonged detention, due process requires  
7 that the government establish, at an individualized hearing before a neutral decisionmaker, that  
8 his detention is justified by clear and convincing evidence of flight risk or danger, as well as  
9 whether alternatives to detention could sufficiently mitigate any risk that does exist.

10 108. For these reasons, Mr. Rocha Cortez's ongoing detention without a hearing  
11 violates the Due Process Clause of the Fifth Amendment.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 14 a. Assume jurisdiction over this matter;
- 15 b. Issue a writ of mandamus or an order requiring Defendants to adjudicate Mr.  
16 Rocha Cortez's request for a prima facie determination on his U visa application  
17 within seven days;
- 18 c. Issue a writ of mandamus or an order requiring Defendants to adjudicate Mr.  
19 Rocha Cortez's U visa application within thirty days;
- 20 d. Issue a writ of habeas corpus; hold a hearing before this Court if warranted;  
21 determine that Mr. Rocha Cortez's detention is not justified because the  
22 government has not established by clear and convincing evidence that Mr. Rocha  
23 Cortez presents a risk of flight or danger in light of available alternatives to  
24

detention; and order Mr. Rocha Cortez's release, with appropriate conditions of supervision if necessary, taking into account his ability to pay a bond;

- e. In the alternative, issue a writ of habeas corpus and order Mr. Rocha Cortez's release within 30 days unless Defendants schedule a hearing before an immigration judge. At that hearing, and in order to continue detention, the government must establish by clear and convincing evidence that Mr. Rocha Cortez presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that his release would present. The Court should further order that if the government cannot meet its burden, the immigration judge must order Mr. Rocha Cortez's release on appropriate conditions of supervision, taking into account his ability to pay a bond;
- f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 27th day of December, 2019.

s/ Matt Adams

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